

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 DENEICE A. MAYLE, WARDEN, :

4                      Petitioner,                      :

5 v. : No. 04-563

6 JACOBY LEE FELIX. :

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8 Washington, D.C.

9 Tuesday, April 19, 2005

10                   The above-entitled matter came on for oral  
11   argument before the Supreme Court of the United States at  
12   11:05 a.m.

13      APPEARANCES:

14 MATTHEW K.M. CHAN, ESQ., Deputy Attorney General,  
15 Sacramento, California; on behalf of the Petitioner.  
16 LISA S. BLATT, ESQ., Assistant to the Solicitor General,  
17 Department of Justice, Washington, D.C.; for the  
18 United States, as amicus curiae, supporting the  
19 Petitioner.

20 DAVID M. PORTER, ESQ., Assistant Federal Defender,  
21 Sacramento, California; on behalf of the Respondent.

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P R O C E E D I N G S

[11:05 a.m.]

CHIEF JUSTICE REHNQUIST: We'll hear argument  
next in Deneice A. Mayle v. Jacoby Lee Felix.

Mr. Chan.

ORAL ARGUMENT OF MATTHEW K.M. CHAN

ON BEHALF OF PETITIONER

MR. CHAN: Mr. Chief Justice, and may it please  
the Court:

In 1996, Congress made an important change to  
the habeas corpus proceedings by enacting a one-year  
statute-of-limitations period. This Court is now asked to  
consider, for the first time, how the relation back  
doctrine under Federal Rule of Civil Procedure 15(c)(2) is  
to be applied in the habeas context.

The Warden rule for relation back is that the  
conduct transaction occurrence set forth in the initial  
petition is the core of operative facts to support the  
constitutional violations alleged. This rule is far  
superior to the Ninth Circuit's rule, which a majority of  
Circuits have determined effectively nullifies AEDPA's  
one-year statute of limitations.

JUSTICE KENNEDY: Well, of course, I take it the  
issue doesn't even arise unless the amendment is accepted  
under 15(a).

1 MR. CHAN: That's correct, Your Honor.

2 JUSTICE KENNEDY: And if there's been lack of  
3 diligence, et cetera, and -- or some prejudice to the  
4 State in the delay of the amendment, the Court just won't  
5 accept the amendment.

6 MR. CHAN: I should clarify that --

7 JUSTICE KENNEDY: Or am I wrong about that?

8 MR. CHAN: -- that in Civil Rule 15(a), the  
9 Court has discretion and grants -- needs to grant leave to  
10 amend after a responsive pleading has been filed.  
11 However, a Petitioner gets to file a responsive pleading  
12 -- excuse me, an amended petition, as a matter of right,  
13 before a responsive pleading is filed.

14 JUSTICE O'CONNOR: Well, it was filed before a  
15 responsive pleading --

16 MR. CHAN: In this case --

17 JUSTICE O'CONNOR: -- was filed --

18 MR. CHAN: -- Your Honor.

19 JUSTICE O'CONNOR: -- in this case.

20 JUSTICE KENNEDY: How long does it usually take  
21 to file a responsive pleading?

22 MR. CHAN: It depends, Your Honor. It varies  
23 with -- case to case. In a lot of pro se --

24 JUSTICE O'CONNOR: But the State has a certain  
25 amount of flexibility in deciding when to respond, does it

1 not?

2 MR. CHAN: Well, Your Honor, the rule does not  
3 require the State to respond to petition until ordered by  
4 the District Court. And to get back to the question of  
5 Rule 15(a), even after a responsive pleading has been  
6 filed, Rule 15(a) does not serve the same purposes as Rule  
7 15(c). The statute of limitations is strict defense,  
8 which is meant to apply whether the filing is a day late  
9 or a year late, whether there is prejudice, or whether  
10 there is dilatory motive. To ameliorate the harsh effects  
11 of the statute of limitations, Rule 15(c)(2) provides an  
12 exception to the statute of limitations, but that  
13 exception is limited to the parameters of Rule 15(c)(2),  
14 itself. So when the Court is provided with a untimely  
15 claim, it determines whether or not that claim is time-  
16 barred, pursuant to 15(c)(2).

17 JUSTICE KENNEDY: Well, just before we leave  
18 15(a), let's assume that we do not accept your position in  
19 this case and there's potential for a gaping hole in  
20 AEDPA. Does the State have some ability to protect itself  
21 by filing a responsive pleading and cutting off the  
22 amendment, or must it do so only as it is ordered by the  
23 Court to file a response?

24 MR. CHAN: For pro- --

25 JUSTICE KENNEDY: Do you see what I'm --

1                   MR. CHAN: I do understand, Your Honor. And for  
2 pro se petitions, without counsel, the State is not even  
3 aware of the existence of the petition until it is served  
4 by the Court. And that occurs after the Court has made a  
5 determination as to whether or not a responsive pleading  
6 is required. It can happen that a Petitioner will be able  
7 to amend his petition after the statute of limitations has  
8 already expired, and we would not even know of that until  
9 after everything had been done.

10                  JUSTICE SOUTER: But you -- you have --

11                  JUSTICE SCALIA: No, please, go ahead.

12                  JUSTICE SOUTER: I was going to say, if -- on  
13 the scenario that you have raised, in which you don't even  
14 know that the petition has been filed, because the -- you  
15 don't -- the Court hasn't called for a response, the whole  
16 rationale behind the narrow reading is absent, as I  
17 understand it, because you point out that the rationale  
18 for the narrow reading is that the first pleadings put you  
19 on notice as to the case that you have to meet. And you  
20 shouldn't then have to be given an entirely new case to  
21 meet after you've been put on notice and taken whatever  
22 preliminary steps you've taken. But in the scenario that  
23 you're talking about, you have not been put on notice,  
24 because you don't even know there is a petition there yet.  
25 You have not been led to prepare a case which has now

1 changed. So it seems to me that your rationale does not  
2 apply in the case in which you do not yet have notice,  
3 and, hence, have not filed a response, for that reason.

4 MR. CHAN: But even in that scenario, we are  
5 still prejudiced by the fact that now we have to address  
6 additional claims that would otherwise be time-barred. We  
7 do not get a chance to --

8 JUSTICE SOUTER: No, but that -- the problem  
9 with that is that a -- the whole point of a relation-back  
10 rule is to get around the time bar. That's why you have  
11 them. And I thought your argument was, "Well, you  
12 shouldn't allow them to get around this time bar, because  
13 we have been put on notice, we have begun to prepare our  
14 case, and we should not then be presented with an entirely  
15 new case." And so, that's why, it seems to me, your  
16 preparation point, in effect, is trying to limit a rule,  
17 the whole purpose of which is to get around the time bar.  
18 If you don't have the preparation point, you don't have an  
19 argument.

20 MR. CHAN: Well, I was addressing the situation  
21 in which we -- in which we can answer first. And I think  
22 that I responded, in the reply brief, that that would be  
23 an onerous burden on the State.

24 JUSTICE SOUTER: Oh, it would be. But, again,  
25 in the case that you're talking about, the very value that





1 JUSTICE GINSBURG: The discretion under 15(a),  
2 at least in the general run of civil proceedings, that is  
3 to be liberally exercised in favor of the pleaders, so  
4 it's a different -- the 15(c) relation-back test is quite  
5 different from the general attitude to pleading  
6 amendments, "Well, we'll let the Plaintiff," or, here, the  
7 Petitioner, "make the pleading alteration, and then it  
8 will be there, and the Court will make a determination of  
9 whether the pleading is good or not." But, at the 15(a)  
10 threshold, it's not much -- it's not much of a screening  
11 device, is it?

12 MR. CHAN: No, Your Honor. The better screening  
13 device is in Rule 15(c)(2). As mentioned, Rule 15(c)(2)  
14 is the provision that determines whether or not a claim is  
15 time-barred. And 15(a), then, can determine whether or  
16 not the claim can be amended if it is not time-barred.

17 CHIEF JUSTICE REHNQUIST: Mr. Chan, do you think  
18 the Rules of Civil Procedure should be applied in habeas  
19 cases after AEDPA the same way they are in civil -- other  
20 civil litigation?

21 MR. CHAN: If the Court is referring to Rule  
22 15(c)(2), our argument is that Rule 15(c)(2) is not a rule  
23 of automatic relation back, in civil terms, in civil  
24 cases; and, therefore, should not be applied as a rule of  
25 automatic relation back in habeas cases.

1 CHIEF JUSTICE REHNQUIST: But what if we were to  
2 determine that in regular civil litigation it is  
3 relatively automatic? What would your position be with  
4 respect to habeas cases after AEDPA?

5 MR. CHAN: Well, my argument would be that the  
6 habeas Rule 11 provides that, to the -- to the extent that  
7 the civil rules are not inconsistent with the federal  
8 habeas provisions and rule, that they may be applied. And  
9 I think that Rule 11 compels a reading that if you have  
10 one application that is inconsistent AEDPA's provisions  
11 and the framework of habeas corpus, and another  
12 interpretation that is not inconsistent, then you must go  
13 with the interpretation that is consistent with AEDPA.

14 JUSTICE SCALIA: But you have more than Rule 11;  
15 you have Section 2244, which says that an application for  
16 habeas corpus, quote, "may be amended as provided in the  
17 rules of procedure applicable to civil actions."

18 MR. CHAN: And that --

19 JUSTICE SCALIA: So, I don't think it's even a  
20 close question whether the rules of procedure for  
21 amendment in civil actions apply.

22 MR. CHAN: There's no question that -- we are  
23 not questioning that Rule 15(c)(2) applied to habeas  
24 corpus, but Section 2242 does not give any guidance as to  
25 how 15(c)(2) should be interpreted. And I believe that

1 guidance comes from Rule 11.

2 JUSTICE STEVENS: Mr. Chan, can I ask you a  
3 question, based on your experience? I'm sure you've had a  
4 lot of experience in this area. This particular claim was  
5 about six months beyond the statute of limitations when he  
6 asked to relate back. It would seem to me that that would  
7 normally be the case, something about that amount of time  
8 would be an issue, because it takes time to process these,  
9 and they had to get counsel appointed. And counsel comes  
10 in and wants to amend the petition, usually, I suppose, in  
11 a pro se petition. Is it -- would I be correct in  
12 assuming that normally in cases of this kind we're talking  
13 about a delay of only a few months?

14 MR. CHAN: For pro se petitions who have been  
15 assigned counsel, Your Honor?

16 JUSTICE STEVENS: Well, no, normally -- the  
17 issue of whether or not there should be -- the petition  
18 may have the benefit of the relation back normally is --  
19 involves a delay of not more than, say, five or six  
20 months, in a normal case.

21 MR. CHAN: I don't have any statistics on that,  
22 Your Honor. But even if it were only five or six months,  
23 that would --

24 JUSTICE STEVENS: You still lose the benefit of  
25 the statute. You lose an important right. But I'm just

1     wondering about how serious a problem it is.

2                 MR. CHAN:   It can be a more serious problem in  
3     capital litigation, where you're dealing with many more  
4     claims, which could be more complex, which could require  
5     exhaustion for the -- before the federal review.  It just  
6     depends on the nature of the claim and the nature of the  
7     issues involved.  I think that the statistics that were  
8     cited in the Justice Department study have different dates  
9     for how long cases pend, depending on the nature of the  
10    claim, whether it be for prosecutorial misconduct,  
11    ineffective assistance, and so forth.

12                JUSTICE SOUTER:  But in the capital case, you've  
13    got a specific provision in there.  I mean, for the  
14    capital case, which is the one, I agree, you worry about  
15    most, because there's reason to delay there, Congress  
16    provided specifically for states to opt in; and when they  
17    opt in, they get the benefit of pretty rigorous time bars.

18                MR. CHAN:  That's true, Your Honor.

19                JUSTICE SOUTER:  And so, why -- I mean, isn't  
20    the answer to the capital-case problem exactly the answer  
21    that Congress gave, and, if a state does not want to opt  
22    in, then the normal amendment rules apply?

23                MR. CHAN:  Chapter 154 provisions do set forth a  
24    fast track for capital cases if the State can establish  
25    certain appointment procedures for counsel.  However, it

1 did not speak to the interpretation of Rule 15(c)(2), and  
2 Congress could not have intended that the statute of  
3 limitations not apply to Chapter 153 simply because of  
4 Chapter 154.

5 JUSTICE GINSBURG: What is your definition of  
6 the test under 15(c)(2)? I mean, on the one side, the  
7 argument is -- Felix's argument is, it's the entire trial  
8 episode, right?

9 MR. CHAN: That's correct, Your Honor.

10 JUSTICE GINSBURG: And is yours that every  
11 single objection that might be made in this entire trial  
12 record, every one, is a separate transaction or  
13 occurrence, for purposes of 15(c)?

14 MR. CHAN: For purpose of 15(c)(2), our  
15 interpretation is that the kind of transaction occurrence  
16 is that core of operative facts that support the  
17 constitutional claims. That means that the objections --  
18 it is not necessarily true that one objection claim would  
19 not relate back to a second objection claim. It just  
20 depends upon whether they're closely related.

21 In this case, the claims are not closely  
22 related. You have a claim made of confrontation -- excuse  
23 me -- confrontation clause, by the admission of Williams'  
24 videotaped evidence; and then you have the admission of  
25 evidence of a coerced confession statement. However, it

1 takes an entirely different set of facts to establish that  
2 new claim.

3 JUSTICE KENNEDY: The successive petition rules,  
4 or the rules prohibiting successive petition, seem to  
5 treat the entire attack as one -- as one legal theory, as  
6 one case. And it seems to me to be in -- somewhat  
7 intentioned for that, for you to break it down the way you  
8 want to under Rule 15(c).

9 MR. CHAN: I think that the Respondent made a  
10 similar argument, based on a res judicata claim, and it  
11 was noted in the treatises that were cited that you have  
12 different intents behind res judicata and the relation-  
13 back doctrine, and its do not apply that way.

14 I'd like to reserve the remainder of my time.

15 CHIEF JUSTICE REHNQUIST: Very well, Mr. Chan.

16 Ms. Blatt, we'll hear from you.

17 ORAL ARGUMENT OF LISA S. BLATT

18 FOR THE UNITED STATES, AS AMICUS CURIAE,

19 SUPPORTING THE PETITIONER

20 MS. BLATT: Thank you, Mr. Chief Justice, and  
21 may it please the Court:

22 The relevant conduct, transaction or occurrence  
23 in the habeas context is the set of facts that are  
24 asserted in support of the particular grounds for relief  
25 under habeas Rule 2. That reference point best preserves

1 Congress' intent under AEDPA to accelerate the filing and  
2 disposition of habeas proceedings.

3 JUSTICE GINSBURG: Are you, Ms. Blatt, taking  
4 the position that that is a tighter test than would apply  
5 ordinarily to the run of civil cases under 15(c)?

6 MS. BLATT: I think, Justice Ginsburg, our  
7 fundamental point is, there is no counterpart to tort or  
8 contract action, with habeas. There is just no analog.  
9 And that is because there's not only Rule 2, which imposes  
10 this heightened across-the-board fact pleading  
11 requirement, but it's also because those pleading rules  
12 work in tandem with all the other unique habeas rules that  
13 apply only to habeas that serve to narrow the timing and  
14 scope of habeas review.

15 JUSTICE KENNEDY: It's a -- it's a little odd  
16 for the statute to say that the rules apply; and then we  
17 look to the rules, but we interpret it differently. I  
18 certainly see the common sense of your position, but I'm  
19 just having a problem with 15(c)(2).

20 MS. BLATT: Yeah, I just don't think it's  
21 different, both -- regardless, you've got to come the case  
22 and figure out what is the relevant-conduct transaction or  
23 occurrence in a habeas petition. And there's the extreme  
24 view of viewing it as the entire trial or conviction, or  
25 there's another view as -- look at it as what the habeas

1 rules require, and that is the prisoner to identify a  
2 particular unconstitutional conduct or occurrence that  
3 gives rise to a basis for relief.

4 Now, under the Ninth Circuit's view, a prisoner  
5 can timely file one claim and then add any number of  
6 completely different claims after the one-year period.  
7 For instance, a timely Batson challenge could then --  
8 after the one year, the claim could add claims of  
9 ineffective assistance of counsel, Brady violations, or  
10 coerced confession. And to have to resolve those claims  
11 would significantly extend the limitations period beyond  
12 the one-year period.

13 JUSTICE O'CONNOR: Well, this case isn't as  
14 extreme as that, is it? It has to do with evidence  
15 admitted at trial.

16 MS. BLATT: It's -- well, that's true, it takes  
17 in trial errors, but that's a lot. Ineffective assistance  
18 of counsel is a trial error. Coerced confession,  
19 confrontation clause, discriminatory selection in the jury  
20 -- I mean, I don't know if that's a trial, or maybe  
21 pretrial -- but it does take in a lot, and I don't think  
22 there's a close call that they relate to different actors,  
23 different time periods --

24 JUSTICE O'CONNOR: Well, certainly in the civil-  
25 case context, generally, the interpretation has been



1 pretty broad. And I suspect if we try to narrow it a lot,  
2 we're going to have a lot of litigation about this point.

3 MS. BLATT: I'm not sure about that. This has  
4 been the rule in the majority of Circuits for five or six  
5 years now, since 1999 or 2000, and it hasn't generated a  
6 lot of problems. And that's because, Justice O'Connor --

7 JUSTICE O'CONNOR: Can you articulate the rule  
8 that you want? Be as precise as you can, if you would.

9 MS. BLATT: It would be the set of facts that  
10 are asserted in support of the grounds for relief in the  
11 original habeas petition. And the reason why this hasn't  
12 generated a problem, Justice O'Connor, is that -- and the  
13 way the Courts of Appeals haven't really had to identify a  
14 test -- is because they're so disparate in time and type.  
15 You have an ineffective-assistance-of-counsel claim that's  
16 timely raised, and then there's discriminatory selection  
17 of the jury.

18 JUSTICE SOUTER: How about --

19 JUSTICE KENNEDY: If I sue for negligence or, in  
20 any civil action we might -- we might imagine, there might  
21 be three or four ways in which the Defendant has injured  
22 me, and the Tiller case, the railroad case, tells us that  
23 it's a single action. And do you concede this, that  
24 you're asking us to interpret this differently and more  
25 narrowly than in the civil context?

1 MS. BLATT: I --

2 JUSTICE KENNEDY: Or do you concede that?

3 MS. BLATT: I concede that -- it's hard to  
4 answer that, Justice Kennedy, because a habeas proceeding  
5 is not a train accident. And there is --

6 JUSTICE KENNEDY: Well, it's hard for me to  
7 figure it out, too, but it seems to me that what you're  
8 saying is that we have a different rule, because this is  
9 habeas.

10 MS. BLATT: In the civil context, you always  
11 have a question of, Do we let in other loan transactions  
12 in a breach of contract, or, Do we let in another pattern  
13 or practice or -- of similar products? I mean, there's  
14 line-drawing, when it comes up in the civil context, all  
15 the time, every day in District Courts. But, Justice  
16 Kennedy, in habeas there are more than ordinary principles  
17 of finality at stake that aren't -- that just aren't true  
18 in any tort or contract action. And this Court said that  
19 in the Calderon decision. And the reason is because of  
20 the interest in not just the prosecutor in having adequate  
21 notice --

22 JUSTICE KENNEDY: So to complete Justice  
23 O'Connor's -- the answer to Justice O'Connor's question,  
24 you say, "And we interpret this differently in habeas than  
25 in other cases, because of finality concerns."

1 MS. BLATT: I would be --

2 JUSTICE KENNEDY: You want us to interpret it  
3 differently.

4 MS. BLATT: That would be totally acceptable,  
5 because of the distinct interest in not only the finality  
6 in the interest of society, and repose --

7 JUSTICE KENNEDY: Well, I'm sure it would be  
8 acceptable, but what's the authority for interpreting the  
9 rule two different ways, depending on the case?

10 MS. BLATT: Well, it's not like there's a habeas  
11 civil proceeding that we're asking for a habeas -- habeas  
12 proceeding to be different. There is no counterpart to a  
13 tort action or a contract action where it's liberal  
14 pleading requirements under Rule 8, and every single  
15 grounds for relief in a habeas proceeding there is a  
16 requirement that the prisoner actually identify all the  
17 grounds and the particular facts in support of that, and  
18 those heightened pleading requirements focus the  
19 proceeding on that particular transaction.

20 JUSTICE SOUTER: Well, let me -- let me ask you  
21 how that would work in this case. The original claim is  
22 that there was a Fourth Amendment violation in admitting,  
23 you know, unlawfully seized evidence. Later, the  
24 Petitioner wants to amend to claim ineffective assistance  
25 of counsel, because counsel totally overlooked the leading

1 case, directly on point, on this particular evidence. Is  
2 that arising out of the same operative set of facts, or is  
3 -- or is that something different? Clearly, the facts are  
4 not exactly the same. Close enough?

5 MS. BLATT: Well, we'd look to the common core.  
6 And I think we would argue that one is focusing on  
7 counsel's performance, and the other is on police  
8 misconduct. But, Justice Souter --

9 JUSTICE SOUTER: Yeah, but if that's -- if  
10 that's the line you're going to draw, then it seems to me  
11 that, in effect, what you are saying is, you can't amend.  
12 Because I can't imagine an operative set of facts that are  
13 going to be much closer than -- in the real world, than the  
14 -- than the two sets that I gave you; and if they're not  
15 close enough, you're really arguing for a no-amendment  
16 rule.

17 MS. BLATT: There's amendment all the time in  
18 the majority of Circuits that have applied the  
19 Government's test, and it comes up in --

20 JUSTICE SOUTER: Not if you were the judge.

21 MS. BLATT: No, that's not true, Justice Souter.

22 JUSTICE SOUTER: No, but, I mean, why --

23 MS. BLATT: Because --

24 JUSTICE SOUTER: -- why --

25 MS. BLATT: Let me just say, on the attorney-

1     ineffectiveness one, it's completely besides the point  
2     what the Government's view is, because the claims are  
3     completely derivative, and the prisoner gets no benefit  
4     whether he gets the amendment or not, because, in order to  
5     show procedural default, he's going to have to show  
6     attorney effectiveness, and he just doesn't get anything  
7     additional, one way or the other, and it really doesn't  
8     matter which claim he asserts first.

9                 But the reason why amendment occurs all the time  
10    is because our rule allows the prisoner to amplify facts  
11    such that if he raises a Miranda claim or a Strickland  
12    claim, and doesn't allege custody or doesn't allege  
13    prejudice under Strickland, he can amend, after the one-  
14    year period. And also --

15                JUSTICE SOUTER: So you can amend -- you can  
16    amend your factual basis, as it were, but you can't amend  
17    your claims.

18                MS. BLATT: No, the way you get claims, which is  
19    really the -- the direct text on the rule says you can add  
20    a claim if it arises out of the same -- is if the  
21    transaction relates to the -- to give you an example, to  
22    an involuntary confession, you could have an amendment of  
23    a Miranda claim that arises out of that police -- alleged  
24    police misconduct that culminated in the admission of the  
25    confession. You could also have a Massiah violation that

1 related back to a Fifth Amendment claim. And you could  
2 have other types, too.

3 JUSTICE STEVENS: It seems to me that the reason  
4 for the -- for defining the relation back the way the rule  
5 does is interest in fairness to the Defendant you don't  
6 want to let him be surprised; whereas, your claim, as I  
7 understand, is really based entirely on the interest in  
8 finality and repose.

9 MS. BLATT: Well, I think the interest of notice  
10 is part of it. I mean, it doesn't always trigger when the  
11 State hasn't -- or the Federal Government hasn't answered.  
12 But statute of limitations are not only about fairness, in  
13 terms of preserving evidence, but the interest in repose  
14 --

15 JUSTICE STEVENS: No, but the definition --

16 MS. BLATT: -- and closure.

17 JUSTICE STEVENS: -- in the rule is really to  
18 protect the interest in fairness, because interest in  
19 repose is always the same.

20 MS. BLATT: Well, that -- it's to preserve the  
21 statute of limitations, but if the relevant transaction is  
22 something narrower than the conviction, then the interest  
23 of repose sets in. And, I mean, the other side has, you  
24 know, the same point -- it's if you draw it out broad  
25 enough --

1 JUSTICE STEVENS: Well, the interest in repose  
2 is always there. You'd always like to preserve the  
3 defense, whenever you can. That's really what's at stake  
4 here.

5 MS. BLATT: Well, I think what's at stake is  
6 Congress' intent in passing the one year. And it's  
7 fundamentally inconsistent with that to have a prisoner  
8 timely file one claim and then potentially add an  
9 unlimited number of claims, no matter how different and --  
10 in time and --

11 JUSTICE STEVENS: Even if they all come in just  
12 two or three months after the statute's run.

13 MS. BLATT: Well --

14 JUSTICE STEVENS: It's really not a big deal.

15 MS. BLATT: -- a six-month difference is a 50-  
16 percent extension of the limitations period, which is a  
17 big deal. And Congress wanted a --

18 JUSTICE GINSBURG: And here, it was five months.

19 MS. BLATT: I think it was five months.

20 JUSTICE GINSBURG: Here.

21 MS. BLATT: It was five months. And --

22 JUSTICE GINSBURG: Are you relying, Ms. Blatt,  
23 at all on the difference between the pleading rules for  
24 civil cases, generally, and habeas, where you do have a  
25 whole set of pleading rules, separate from the habeas

1 rules?

2 MS. BLATT: May I answer? I think we're relying  
3 on both habeas Rule 2 and the principles under AEDPA on  
4 finality.

5 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Blatt.  
6 Mr. Porter, we'll hear from you.

7 ORAL ARGUMENT OF DAVID M. PORTER

8 ON BEHALF OF RESPONDENT

9 MR. PORTER: Thank you. Mr. Chief Justice, and  
10 may it please the Court:

11 I'd like to respond to the finality concern,  
12 because I think that really goes to the heart of this  
13 case.

14 Three weeks ago, this Court, in Rhines versus  
15 Weber, unanimously approved of the stay-and-abeyance  
16 procedure, because the Petitioner's interest in obtaining  
17 review of his federal claims outweighed the competing  
18 interests of finality and speedy resolution of the federal  
19 petition.

20 Now, Mr. Felix's case is even more compelling  
21 than Rhines, because, unlike the stay-and-abeyance  
22 procedure, which is just the power -- the inherent power  
23 of the Court to control its docket, here we're talking  
24 about the command of Congress.

25 In Section 2242, of the judicial code, Congress



1 provided, specifically, that the rules governing  
2 amendments of habeas petitions be controlled by the rules  
3 governing civil procedure. The only rule regarding --

4 JUSTICE O'CONNOR: Well, that's true. I mean,  
5 we can accept that, but we still have to interpret what's  
6 a transaction or occurrence, I assume. And is it open to  
7 us, in the habeas context, to take a narrow view of that?

8 MR. PORTER: Your Honor, I believe that under  
9 this Court's decisions about how you determine what  
10 Congress did, Congress operated against a backdrop of how  
11 Rule 15(c) was applied by this Court and the lower courts.  
12 And in 1948, when 2242 was adopted, Tiller was very  
13 recent; it was a 1945 case. It must have been -- we  
14 assume that Congress, like normal citizens, know what the  
15 law is, and they developed the rule against that backdrop.

16 JUSTICE SCALIA: Well, that was -- that was a  
17 rule for tort cases; it wasn't a rule for habeas cases.  
18 And, as pointed out by the Government, habeas cases are  
19 fundamentally different, in that the notice that you give  
20 to the opposing party in tort cases, ordinary civil cases,  
21 is very vague. It's just, you know, what the event was,  
22 "I got hit by a train." You don't have to say, "Wherein,  
23 the train was negligent -- or the railroad was negligent,"  
24 or anything else; just, "I got hit by a train." Whereas,  
25 with respect to habeas corpus, there are rules that

1     require specifying all the grounds for relief available to  
2     the Petitioner, state the facts supporting each ground.  
3     It seems to me that those different pleading requirements  
4     suggest that what is the relevant transaction or  
5     occurrence for the one is not the same as what is the  
6     relevant transaction or occurrence for the other.

7             MR. PORTER: That's a very good point I'd like  
8     to address, because I don't think we hit that -- upon that  
9     in our briefs.

10            Habeas 2 -- habeas Rule 2 does require fact  
11     pleading, but the purpose of that is not to give notice to  
12     the other party, as the Solicitor General and the Warden  
13     suggest. The petition is not served on the Warden in  
14     habeas cases, so they don't even get a copy of the  
15     petition; it is filed with the court.

16            The purpose of the fact-pleading requirement of  
17     Rule 2 is so that the District Court, under Rule 4 of  
18     habeas rules, can perform its screening function to  
19     determine whether the petition is facially valid or not.  
20     That requires some sort of facts to be plead. And that's  
21     in the Advisory Committee notes. It's also the  
22     requirement of 2243 of the Judicial Code, that the  
23     District Court review the petition so that wardens are not  
24     disturbed with every pro se litigant's Petitioner and have  
25     to respond.

1 CHIEF JUSTICE REHNQUIST: Whatever the reason  
2 for it is, certainly you can interpret the rules to say  
3 that the pleading requirement being different and much  
4 more specific, the amendment process should be different.

5 MR. PORTER: I think that that's -- Congress  
6 reasonably could have said that, and reasonably could have  
7 said that -- amended 2242, for example, when it passed the  
8 Antiterrorism Act, and said, "Generally, yes, the rules of  
9 civil procedure apply for amendments," but we're -- there  
10 should be a narrower rule.

11 CHIEF JUSTICE REHNQUIST: But you don't need an  
12 amendment, I don't think. If you're talking about a  
13 transaction, the question is, What is the transaction?  
14 And in habeas it may be quite different than in other  
15 civil proceedings.

16 MR. PORTER: I think that the only basis for  
17 determining what "transaction" is, you have to look at the  
18 -- if you -- if you're right, that we should have some  
19 kind of different rule for habeas than all other civil  
20 proceedings, well, then it has to be grounded in the  
21 habeas statutes. And if -- when you look at the habeas  
22 statutes, it says, "Confinement must be in violation of  
23 the constitutional" --

24 JUSTICE BREYER: But then --

25 MR. PORTER: -- "laws which" --

1 JUSTICE BREYER: I mean, what's bothering me  
2 about this case is, I don't know that the Government needs  
3 to argue that there is a different rule. As I read the  
4 lower-court decisions, what they've done is used the words  
5 "core operative fact." Core operative facts in a tort  
6 case, where the engine of Train A runs into the caboose of  
7 Train B, is that collision. And the decision that the  
8 front -- the locomotive should have been lit, as well as  
9 the back of the caboose, seems, arguably at least, the  
10 same operative fact. Core operative facts. But to say  
11 that a witness, in the middle of the trial, was treated  
12 unconstitutionally seems, at least arguably, quite a  
13 different set of core operative facts from the fact that  
14 the Defendant was questioned before the trial.

15 Now, that seems to me related to the nature of  
16 habeas, but it still seems to me that those words, "core  
17 operative fact," the same words, work differently in the  
18 two situations. And to adopt your approach also strikes  
19 me as running around the one-year statute of limitations.

20 Now, those are my concerns, and I would  
21 appreciate your addressing them.

22 MR. PORTER: Well, I hope I can put those to  
23 rest.

24 On the first concern, I think that there are  
25 differences between a train wreck and habeas. Most of my



1 habeas Rule 4, that the purpose for requiring the facts  
2 underlying the claims is not to give notice to the other  
3 side, but to allow the District Court to perform its  
4 screening function to determine whether the -- whether the  
5 petition is facially valid or not. If it's not valid,  
6 then the Warden is not even served with the petition. It  
7 just -- the petition is simply dismissed.

8 JUSTICE SCALIA: Can you file -- can you file a  
9 request for a more specific statement in habeas, as you  
10 can in a civil case?

11 MR. PORTER: Yes, under Rule 81 of the Federal  
12 Rules of Civil Procedure, and Rule 11, unless application  
13 of that rule is contrary to, or inconsistent with, the  
14 habeas statutes or rules, then it is applied.

15 JUSTICE BREYER: Could we go back? Because I'm  
16 still concerned with the fact that Claim 1, which is a  
17 claim on January 2 that police arrested the Defendant and  
18 didn't read him Miranda warnings properly; Claim 2 is a  
19 claim that, two and a half years later, the prosecutor,  
20 during the trial, made some prejudicial arguments. Now, I  
21 think, just common sense, Do those arise out of the same  
22 core operative facts? Absolutely not. The facts are  
23 totally different. The only thing that brings them  
24 together is that there was a single legal proceeding.

25 And, at the same time, if I adopt this approach

1     that doesn't seem to comport with the common sense, I'm  
2     running around Congress' effort with the one-year statute.

3             So what is your response?

4             MR. PORTER:  First of all, the response is that  
5     the statute -- the rule does not use the term "core  
6     operative facts."

7             JUSTICE BREYER:  No, but every lower court that  
8     has -- not every one; you know better than I -- but it  
9     seems like a commonly found expression when lower courts  
10    have interpreted the Rule 15 and have looked to Tiller.  
11    Is that true, or not true?

12            MR. PORTER:  Not in the habeas context.  None of  
13    those --

14            JUSTICE BREYER:  No, of course not in the habeas  
15    context.  I'm saying that if we're trying to apply, in the  
16    habeas context, the same test that's used elsewhere in the  
17    civil law, wouldn't we use the word "core operative fact"?  
18    Or would we?  I'm not as familiar with this as you.  What  
19    is the answer?

20            MR. PORTER:  I don't believe so.  I think that  
21    --

22            JUSTICE BREYER:  No?

23            MR. PORTER:  -- and Wright and Miller confirmed  
24    this, that actually courts have tried to develop different  
25    tests:  Is it the same evidence that they're going to use?

1 Is it a core of operative facts? And, in the end, they  
2 say there's no better test than the one set forth in the  
3 rule, and that is conduct, transaction, or occurrence.

4 JUSTICE BREYER: But, of course, we're trying to  
5 decide what is the transaction.

6 MR. PORTER: Right, but the reason why is that  
7 there is a body of case law that determines -- that's told  
8 us what that means.

9 JUSTICE KENNEDY: Let's --

10 MR. PORTER: And Tiller tells us it means that  
11 it's the events leading up to the injury. And so, that's  
12 how, I think, that that phrase has been interpreted, and  
13 that's what Congress adopted --

14 JUSTICE KENNEDY: Let's take --

15 CHIEF JUSTICE REHNQUIST: What about -- what  
16 about the case law in the lower courts that Justice Breyer  
17 referred to, dealing with the core operative facts and  
18 adopting --

19 MR. PORTER: Mr. Chief Justice, I think -- they  
20 don't -- I'm not aware of those cases using --

21 CHIEF JUSTICE REHNQUIST: -- you say let's look  
22 at all the cases that have followed Tiller, and -- but  
23 apparently a lot of the courts adopting the core operative  
24 fact have developed that without full regard to Tiller.

25 MR. PORTER: No, the lower courts -- the most



1 usual interpretation of Tiller that we've cited in our  
2 brief that the lower courts perform is this idea of any  
3 events leading up to the ultimate injury --

4 JUSTICE O'CONNOR: But in the habeas context,  
5 haven't the majority of the Circuits had a more  
6 restrictive rule than the Seventh Circuit and the Ninth  
7 have espoused?

8 MR. PORTER: Yes, they have.

9 JUSTICE O'CONNOR: Yeah. And so, I think the  
10 question is, Should we follow the majority of the  
11 Circuits?

12 MR. PORTER: And you should not, because what  
13 those courts failed to do is, they failed to appreciate  
14 that Congress has already spoken, in two different ways.  
15 First, Congress adopted 2242; and when it adopted AEDPA,  
16 it did not amend 2242, and it did not amend Rule 15(c).  
17 And, second, in death-penalty cases, which, after all, is  
18 really the only set of cases where there is an incentive  
19 to delay, Congress specifically spoke. And in  
20 2266(b)(3)(B) Congress said, "Amendments to petitions  
21 shall not be permitted after answers are filed unless the  
22 Petitioner can make a showing for a second or successive  
23 petition."

24 Now, this is Lindh versus Murphy all over again.  
25 This is a case where Congress has spoken as to Chapter

1    154. In Lindh versus Murphy, it said, "That chapter will  
2    be -- the amendment will be applied retroactively to cases  
3    then pending." They did not do anything with Chapter 153  
4    cases. Their negative implication, when Congress so  
5    specifically addresses this issue for one limited, narrow  
6    set of cases -- and that really make sense in death-  
7    penalty cases, does it not? When the State gives the  
8    death-penalty Petitioner lawyers for State post-conviction  
9    review, then all of those claims are done in state habeas,  
10   they are brought together, it fulfills the claim-gathering  
11   function of the Antiterrorism Act; and then, very  
12   logically, Congress determined, "We should have a very,  
13   very strict restriction of amendments."

14                JUSTICE KENNEDY: Let me -- let me ask you.  
15   Take the two events in this case, and as explained by  
16   Justice Breyer, a Miranda violation in the questioning and  
17   then a problem with the confrontation clause in the trial,  
18   two years later. Let's assume that there was a 1983 civil  
19   action for those violations, and let's assume that both  
20   are actionable. Different cause of action. Is that --  
21   how would -- how would an amendment be treated in a civil  
22   action? Based on most of the lower-court precedents  
23   you've been-- would the amendment related back?

24                MR. PORTER: I don't believe so. In civil-  
25   rights actions, there are -- the constitutional rights at

1 issue are the injury. So one -- if a person started out  
2 with saying their injury in the civil-rights action was  
3 the admission of the evidence --

4 JUSTICE KENNEDY: You would think no relation  
5 back, in the case I put --

6 MR. PORTER: Because there -- it does not relate  
7 to the same injury. In habeas, by contrast, the injury is  
8 the custody that's in violation of the Constitution laws  
9 and treaties --

10 JUSTICE STEVENS: Well, the injury --

11 MR. PORTER: -- of the United States.

12 JUSTICE STEVENS: -- I suppose, in the -- in the  
13 Miranda violation, is introducing the evidence at the time  
14 of trial.

15 MR. PORTER: That's correct.

16 JUSTICE STEVENS: That's the point. You don't  
17 look two and a half years back just to -- you decide what  
18 happened at the trial.

19 MR. PORTER: That's correct. And in this --

20 JUSTICE BREYER: Right. So what about the  
21 injury? What about that? That the injury -- the trial's  
22 over, say, six weeks -- the injury takes place at the time  
23 of introduction? Or is the injury the whole time the --  
24 the guilty verdict?

25 MR. PORTER: Well, that the that's the problem

1 with the -- with the Warden's proposed test. Are these,  
2 quote, "closely related claims"? That is not, I suggest,  
3 a -- nearly a bright-line rule that would help the  
4 District Courts in determining what is, and what is not,  
5 part of the same transaction. So, I don't think that  
6 that's a real viable alternative.

7 I -- again, I think it's important for the Court  
8 to go back -- if it's going to create a different rule in  
9 habeas, it has to have some grounding --

10 JUSTICE BREYER: Well, why doesn't the 1981 --  
11 given -- maybe I don't -- haven't followed it correctly,  
12 but why doesn't the 1981 claim, then, relate back? I  
13 think the injury that took place from both violations took  
14 place at the time of trial.

15 MR. PORTER: Well, maybe I wasn't following the  
16 hypothetical closely enough.

17 JUSTICE BREYER: Okay, I --

18 MR. PORTER: If --

19 JUSTICE BREYER: Forget it.

20 MR. PORTER: Okay. Well, let -- if we can  
21 return to the facts of this case, I think these -- we fit  
22 comfortably within the definition of "transaction,"  
23 because both of the rights that Mr. Felix is asserting in  
24 this habeas petition are trial rights. Under this Court's  
25 decision in Chavez versus Martinez, in this Court's

1 decision in Pennsylvania versus Ritchie, both the Fifth  
2 Amendment and the Sixth Amendment rights are trial rights.  
3 Those statements, independently, when they were taken by  
4 the same police officer, did not violate any rights. They  
5 only violated Mr. Felix's rights when they were introduced  
6 in the -- in the prosecution's case in chief.

7 CHIEF JUSTICE REHNQUIST: But the argument as to  
8 whether it was properly done, whether the ruling was  
9 proper, is going to go back to the time of the Miranda  
10 interrogation.

11 MR. PORTER: I agree that those facts are  
12 relevant, but it's the operative facts that are --

13 CHIEF JUSTICE REHNQUIST: Well, why isn't that  
14 an operative fact?

15 MR. PORTER: Well, it is -- the operative fact  
16 -- what makes it actionable is that the statements were  
17 introduced at trial.

18 CHIEF JUSTICE REHNQUIST: Yeah, but --

19 MR. PORTER: If those statements weren't  
20 introduced at trial --

21 CHIEF JUSTICE REHNQUIST: Well, you've switched.  
22 We were talking about "operative fact," and now you said  
23 "actionable fact."

24 MR. PORTER: I believe those are the same  
25 principles, Your Honor.

1 JUSTICE GINSBURG: Mr. Porter, if I understand  
2 you right, you are saying that, in the habeas context, the  
3 counterpart to an injury in a tort case is the unlawful  
4 detention, itself. Am --

5 MR. PORTER: That's correct.

6 JUSTICE GINSBURG: -- I right?

7 MR. PORTER: Yes.

8 JUSTICE GINSBURG: Okay. So if that's the  
9 injury, could the habeas Petitioner come in with a  
10 complaint that says, "I am being detained in violation of  
11 the Constitution," period, "and I need a lawyer to spell  
12 out the details"?

13 MR. PORTER: The Petitioner could file such a  
14 petition. They have been called "placeholder petitions."  
15 But, clearly, under Rule 4 of the habeas rules, such a  
16 petition would be subject to immediate dismissal by the  
17 District Court, because it doesn't conform with habeas  
18 Rule 2, which requires that all of the claims be alleged  
19 and all of the facts be alleged.

20 JUSTICE BREYER: What about the other part of  
21 what's been bothering me? To be specific about it, it  
22 sounds like a very good system. The system is, "Habeas  
23 Petitioner, you file, within a year, your petition with  
24 one claim, and we'll look it over," says the judge, "and  
25 if it sounds like you need a lawyer, we'll give you a

1 lawyer, and then he'll come in with a whole lot more."

2 And that's quite protective.

3 But suppose you said that to Congress. They  
4 passed this thing. And you say, "You know, your year  
5 here, it doesn't really mean a year. It means a year for  
6 this initial filing, and then what's going to happen is,  
7 they'll give him a lawyer, and he'll come back and say the  
8 interest of justice, but, really, it always, almost  
9 always, favors the Petitioner, and the State isn't that  
10 fooled, and, really, it's not a problem for them, and" --  
11 what would that Congress have said? That's -- that is  
12 very much disturbing me.

13 MR. PORTER: I think the answer to that is that  
14 statutes of limitations are ubiquitous in civil  
15 proceedings. But just as ubiquitous is Rule 15(c)  
16 relation back. They go hand in glove. And Congress, in  
17 1948, just three years after the Tiller case, when it  
18 enacts 2242, must have had on its mind that relation back  
19 goes along hand in glove with the statutes of limitation;  
20 and, not only that, but how relation back has been  
21 construed by the courts.

22 So I don't think it's any surprise to Congress  
23 now all of you -- now all of a sudden that we say, "Oh,  
24 you know, by the way, there's this relation back that's  
25 going to give us maybe four or five months longer than the

1 year." I don't think Congress is at all surprised by  
2 that. And Congress just adopted new rules of habeas  
3 proceedings, in 2004; didn't amend Rule 15(c), didn't  
4 provide another rule in habeas, didn't amend 2242.

5 And, as far as the potentials for abuse here,  
6 the Seventh Circuit's -- Judge Easterbrook's decision for  
7 the Seventh Circuit in the Ellzey case has been on the --  
8 on the books for more than two years now. And I would  
9 suggest that if the parade of horrors that the Warden  
10 has suggested, about year-long delays and all of these  
11 potential abuses, in fact, are allowed by the rule that we  
12 seek here, that the Warden or the United States would have  
13 come to this Court and said, "Look, here are the abuses.  
14 They are happening right now." Well, in fact, Ellzey's  
15 been cited twice in all -- in these years, by the District  
16 Court, to allow relation back. Mr. Felix's case has not  
17 been cited at all in a public case. So, I think that the  
18 parade of horrors is theoretical and not practical.

19 As Justice Kennedy pointed out, you have Rule  
20 15(a) as a backstop. And once the answer is filed, that  
21 really cuts off any right to file an amendment as a matter  
22 of right. Then --

23 JUSTICE GINSBURG: But I think that, first of  
24 all, the amendment may be made before there is a defensive  
25 plea. As Mr. Chan pointed out, the Warden doesn't even



1 get the petition until it's been screened by the Court.  
2 The other is the understanding, on the civil side, of Rule  
3 15(a). It's a very liberal pleading rule. The threshold  
4 for granting permission to amend a pleading under 15(a) is  
5 very easy to pass.

6 MR. PORTER: In Foman versus Davis, this Court  
7 responded to that concern and said that District Courts  
8 have ample authority under 15(a) to deny amendments to  
9 petitions -- or amendments to initial pleadings. It said,  
10 for bad-faith or dilatory tactics, but then said even  
11 undue delay -- so you don't even require a showing of bad  
12 faith -- for prejudice to the other side.

13 So all of the concerns that the Warden has  
14 raised are specifically identified by this Court to give  
15 the District Court the right to deny an amendment to the  
16 petition. And so, I believe that those powers in the  
17 District Court are very ample, indeed.

18 Plus, we have -- the states have their own  
19 ability to protect themselves. As one of Your Honors  
20 mentioned, we have 2266. If the -- if the states opt in,  
21 they get the protections of 2266. States have their own  
22 mechanisms. All but six states in the Union have statutes  
23 of limitations, or very firm laches doctrines, that will  
24 prevent the elongated delays that the Warden is worried  
25 about in this case.



1 more rebuttal.

2 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Chan.

3 The case is submitted.

4 [Whereupon, at 11:57 a.m., the case in the  
5 above-entitled matter was submitted.]

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